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No. 80-631

In the Supreme Court of the United States

OCTOBER TERM, 1980

HOSPITAL CENTRAL SERVICES ASSOCIATION,
PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

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MEMORANDUM FOR THE UNITED STATES

The question presented in this federal income tax case is whether a corporation operated by several tax-exempt charitable hospitals for the purpose of providing hospital laundry and linen supply services is itself a tax-exempt charitable organization under Section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C.). This question is also presented in *HCSC-Laundry* v. *United States*, petition for a writ of cert. pending, No. 80-338, with which the decision below is in accord (Pet. App. B3).[1]

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[1] The court below noted (Pet. App. B2 n.1) that petitioner might not qualify under Section 501(e)(1)(B) because at the time it was organized, it served a hospital that was not exempt under Section 501(c)(3) (see Pet. App. A2). Since the case turned on the meaning of Section 501(e)(1)(A), the court below did not reach this question, which could have constituted an alternative ground of decision in favor of the government.

The pertinent facts may be summarized as follows: Petitioner, whose principal place of business is located in Seattle, Washington, was incorporated on March 30, 1966, as a nonprofit Washington corporation to operate a central hospital facility for taxpaying and tax-exempt hospitals (Pet. App. A2; Complaint, Exh. A, at 7). During 1974, the taxable year at issue, petitioner provided laundry service to eight nonprofit hospitals. Petitioner has no capital stock. It has two classes of membership: active and associate. Active members are required to execute long-term linen service agreements to use petitioner to satisfy their laundry requirements. Associate members are not required to execute long-term service agreements and laundry service to them may be terminated at will. Only active members are entitled to vote for and be members of the board of trustees (Pet. App. A2; R. 38-41).[2]

Petitioner derives income from membership fees based on the amount of service actually provided. The charge per pound of laundry is set from time to time by the Board of Trustees and is calculated so as to cover the actual costs of operation, retirement of debt and new equipment purchases (Pet. App. A3-A4).

No part of petitioner's net earnings inures to the benefit of any individual (Pet. App. A4). Petitioner employs between 110 and 128 persons, including a manager and a managerial staff consisting of approximately nine persons (Pet. App. A4).

On July 9, 1975, petitioner filed an application for recognition of exemption from federal income taxation. The Internal Revenue Service denied this application by letter dated August 3, 1976 (Pet. App. A4).

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[2] "R." refers to the record on appeal in the court of appeals.

Petitioner filed its corporate income tax return for 1974 and paid $3,862 in taxes. In 1975, it had a net operating loss which it carried back and utilized to recover all the tax paid in 1974 except $178.[3] In response to a notice from the Internal Revenue Service dated September 1, 1975, petitioner paid a penalty of $96.55 and interest of $89.35 for 1974 (Pet. App. A5). On August 26, 1976, petitioner filed a claim for refund for 1974 to recover the penalty and interest paid for that year in the amount of $185.90. On October 4, 1976, this claim of refund was denied (Pet. App. A5).

On November 12, 1976, petitioner commenced this refund suit in the United States District Court for the Western District of Washington to recover the $185.90 paid as penalty and interest for its 1974 tax year and claimed that it was entitled to this refund because it was a tax-exempt organization "organized and operated exclusively for religious, charitable, scientific, * * * or educational purposes * * *" under Section 501(c)(3) of the Internal Revenue Code (Pet. 2).

The district court upheld petitioner's claim (Pet. App. A1-A13). The court of appeals reversed (Pet. App. B1-B3). It noted that in enacting Section 501(e) of the Internal Revenue Code, Congress had made a legislative decision not to give tax-exempt status to mutual cooperative hospital laundries such as petitioner. The court then stated (Pet. App. B3): "Whether the legislative decision to favor the commercial laundry industry * * * was a wise or equitable decision is obviously not a judicial question. On the only judicial question—the

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[3]On August 25, 2976, petitioner filed an amended income tax return to recover a refund of $178 for taxes paid for 1974. The Internal Revenue Service had not acted with respect to that claim as of the date of the district court opinion. Petitioner has not sought to recover the $178 in this refund suit.

meaning of the tax law—we agree with the Third Circuit for the reasons stated in its opinion [in *HCSC-Laundry* v. *United States*, 624 F. 2d 428 (1980)]."

The question presented in this case is identical to that before the Court in *HCSC-Laundry*, No. 80-338. In response to the petition in that case, we did not oppose certiorari but suggested that summary affirmance might be appropriate in view of the clarity of the legislative history demonstrating Congress' intent to exclude mutual hospital laundries from tax-exempt status. The Court should therefore hold this case and dispose of it in accordance with its disposition in No. 80-338.

Respectfully submitted.

LAWRENCE G. WALLACE
*Acting Solicitor General**

NOVEMBER 1980

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* The Solicitor General is disqualified in this case.

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